

Decision **(DRAFT DECISION OF ALJ BUSHEY (Mailed 9/4/03)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumers' Action Network,

Complainant,

vs.

Pacific Bell (U 1001 C),

Defendant.

Case 98-04-004
(Filed April 6, 1998)

The Greenlining Institute and Latino Issues Forum,

Complainants,

vs.

Pacific Bell (U 1001 C),

Defendant.

Case 98-06-003
(Filed June 1, 1998)

The Utility Consumers' Action Network,

Complainant,

vs.

Pacific Bell (U 1001 C),

Defendant.

Case 98-06-027
(Filed June 8, 1998)

Telecommunications International Union, California
Local 103, International Federation of Professional
and Technical Engineers, AFL-CIO (TIU), on behalf of
itself and on behalf of TIU members, as consumers of
Pacific services and employees responsible for
customer service,

Complainants,

vs.

Pacific Bell, Pacific Telesis,
Southwestern Bell Communications,

Defendants.

Case 98-06-049
(Filed June 24, 1998)

Investigation on the Commission's Own Motion into
the Establishment of a Forum to Consider Rates,
Rules, Practices, and Policies of Pacific Bell and GTE,
California, Inc.

Investigation 90-02-047
(Filed February 23, 1990)

OPINION AWARDING INTERVENOR COMPENSATION

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OPINION AWARDING INTERVENOR COMPENSATION

This decision awards The Greenlining Institute and Latino Issues Forum (Greenlining) \$338,405.16 for its contribution as intervenor to Decision (D.) 01-09-058. We find that Greenlining made a substantial contribution to our resolution of several issues. Although Greenlining was not alone in advocating certain positions we adopted, we find that on these issues, Greenlining materially supplemented or complemented the showing of the other parties taking these positions. On another issue, where Greenlining was the only party advocating a position, we did not adopt Greenlining's position, but we nevertheless grant compensation due to the importance of the issue and Greenlining's enhancement of the record. We also find that on several issues Greenlining did not demonstrate that it made a substantial contribution; we accordingly deny compensation with respect to Greenlining's work on these issues.

I. Background

Greenlining requests compensation for its costs in this complex adjudicatory proceeding against Pacific Bell (Pacific). This proceeding began when two consumer groups and one employee union filed complaints and the Commission's Office of Ratepayer Advocates (ORA) filed a petition challenging the lawfulness of Pacific's then-current marketing of Caller ID and other services. Also, an individual customer petitioned to intervene and was granted party status in the first-filed complaint proceeding. Due to the similarity of the issues raised, the Commission consolidated the complaints and petition. A third consumer group and another union intervened after release of the Presiding Officer's Decision. Each complaint and the petition are discussed below.

**A. Utility Consumers' Action Network (UCAN)
Complaints (Case (C.) 98-04-004 and C.98-06-027)**

On April 6, 1998, the UCAN filed a complaint alleging the Pacific was operating in violation of three subject matter categories of statutes and Commission orders. UCAN specifically alleged that Pacific was (1) unlawfully marketing and providing consumer education regarding Caller ID, (2) deceptively marketing packaged services known as "The Basics" and the "Basics Plus," and (3) employing sales programs and practices which caused deterioration in Pacific's customer service.

UCAN filed a second complaint on June 8, 1998, in which it alleged that Pacific's marketing and customer education for its Caller ID program violated Federal Communications Commission Order 95-187, §§ 2896(a) and 2893,¹ Pacific Tariff 5.4.10(C) Regulations - 19 Blocking Options for Caller ID, and D.96-11-062 and D.92-06-065.

B. Greenlining Complaint (C.98-06-003)

On June 1, 1998, Greenlining filed a complaint alleging that Pacific had instructed its service representatives to use deceptive names for packages of expensive optional services, to pressure customers into removing complete Caller ID blocking, and to withhold information critical for consumers to make informed purchasing decisions. Greenlining contended that Pacific thereby (1) breached its duty to provide just and reasonable service to the public by implementing deceptive sales and marketing policies, (2) violated § 2896(a) by using deceptive sales tactics to market packages of services and Caller ID, (3) violated Business and Professions Code §§ 17500 by disseminating untrue or misleading statements

with the intent to induce consumers to purchase services, (4) violated Business and Professions Code § 17200-17208 by unfairly competing, and (5) willfully invaded the privacy of consumers in contravention of § 2896(a), Section 1 of the California Constitution, and Commission orders.

**C. Telecommunications International Union Complaint
(C.98-06-049)**

On June 24, 1998, the Telecommunications Union, California Local 103, International Federation of Professional and Technical Engineers, AFL-CIO (TIU) filed a complaint alleging that Pacific had unlawfully marketed and fraudulently misrepresented the Caller ID service, had deceptively sold and marketed packaged services known as “The Basics” and “The Basics Plus,” and had employed deceptive and unfair marketing practices which emphasized sales over service to the detriment of customer service.

D. ORA Petition

On June 4, 1998, ORA filed a petition in Investigation 90-02-047, the “Forum OII” proceeding, entitled: “Petition of the Office of Ratepayer Advocates for an Order that Pacific Immediately Cease All Improper Practices at Its Residential Order Centers and for Other Appropriate Relief.” Attached to the petition was a report prepared by ORA alleging that Pacific was using improper and illegal procedures relating to customer privacy, Caller ID, packages of custom calling features, and the Universal Lifeline Service program. ORA asked the Commission to hold workshops to consider adopting a service quality assurance mechanism.

¹ All section (§) citations are to the Public Utilities Code unless otherwise indicated.

E. Interventions

On June 20, 1998, Wallace B. Roberts petitioned to intervene in the UCAN complaint, C.98-04-004. He was granted party status and filed written comments in the consolidated proceeding.

On January 21, 2000, The Utility Reform Network and the Communications Workers of America filed motions to intervene and appeals of the Presiding Officer's Decision. The motions were granted.

II. D.01-09-058

In D.01-09-058, we addressed and resolved the issues regarding Pacific's techniques for marketing its optional services (such as Caller ID) to residential customers. We found that some of those techniques violated statutory and decisional standards, and that some did not. We found that Pacific failed to sufficiently inform customers regarding the number blocking options for preventing a caller's number from being displayed on a Caller ID device. We also found that Pacific's marketing policy of sequentially offering packages of services in descending order of price fails to sufficiently inform customers because they are not told of the lesser priced packages unless they refuse the more expensive package. We also held that Pacific could not use the Universal Lifeline Telephone Service subsidy program as a link to market other optional services, and that "The Basics," a package of optional services, inaccurately suggests a relationship with basic telephone service.

To remedy these violations, we ordered Pacific to (1) notify customers who were affected by its violations and make any necessary corrections, (2) pay a \$15.225 million fine, and (3) revise Tariff Rule 12 to ensure that customer service requests are fulfilled prior to subjecting customers to marketing pitches.

We also found in favor of Pacific on several issues. First, neither § 2893 nor any other law prohibits Pacific from offering the Anonymous Call Rejection (ACR) service. This service prevents calls with Caller ID blocking from being presented to the customer's telephone. Second, we were unable to find on the evidence presented by Greenlining that Pacific had unfairly targeted minorities with its misleading marketing practices. Third, we concluded that federal customer privacy requirements do not prevent Pacific from sharing customer information with its affiliates and agents. Fourth, we declined to adjudicate the Greenlining claims that Pacific violated the Business and Professions Code.

III. Greenlining Request for Compensation

On April 12, 2002, Greenlining filed its request for intervenor compensation for its contributions to D.01-09-058. It supplemented the request on November 20, 2002. In the final request, Greenlining seeks total compensation of \$1,154,941.60, consisting of \$941,406.81 for its outside counsel, the Bingham McCutchen (McCutchen)² law firm, and \$213,534.81 for its staff attorneys and experts. The time records indicate that the attorneys spent a total of 4,656 hours on this case over a four-year period. Greenlining allocates this time to five issues: (1) Caller ID/Anonymous Call Rejection, (2) Inside Wire, (3) "The Basics," (4) Marketing Programs and Tactics, and (5) Customer Information.

IV. Pacific's Opposition and Greenlining's Response

Pacific opposed Greenlining's request for compensation. Pacific contended that there was a "serious question whether Greenlining provided a substantial contribution to this proceeding." Pacific noted that the Commission had rejected Greenlining's requests for fines based on the saver pack name "The Basics," and

² Formerly, McCutchen Doyle Brown & Enerson.

for remedies based on Pacific's treatment of low-income or non-English speaking customers. Pacific emphasized that Greenlining wasted substantial resources unsuccessfully seeking findings that Pacific had violated the Business and Professions Code. Pacific concluded that any award should be reduced to reflect Greenlining's limited contribution as the "Commission rejected most of Greenlining's theories and its efforts duplicated work of other complainants."

Pacific also argued that Greenlining could not recover the costs of its outside counsel, McCutchen, because the firm had agreed to represent Greenlining on a pro bono basis. Pacific pointed out that Greenlining had not actually incurred the nearly \$1,000,000 in fees requested for McCutchen because Greenlining had no duty to pay McCutchen under the agreement, and thus denial of compensation would impose no financial hardship on Greenlining.

Pacific challenged Greenlining's request as excessive due to the high hourly rates charged by McCutchen and the amount of time expended. Pacific pointed out that Greenlining had 12 lawyers working on a five-day hearing, and asserted that this compensation request alone exceeds the Commission's typical total intervenor compensation awards for a whole year.

Pacific also objected to the over \$200,000 requested for Greenlining's in-house counsel. Pacific contended that having secured outside counsel, there is no justification for compensating three in-house lawyers to monitor the proceeding, and to give briefings to Greenlining staff and board members.

In reply, Greenlining stated that it must demonstrate financial hardship to itself, not to McCutchen. Greenlining asserted that "the Commission adopted nearly all of the factual and legal contentions that were made by Greenlining." Greenlining Reply at 3. Greenlining also argued that it should be compensated

for the time it spent on the Business and Professions Code issues because the Commission merely declined to adjudicate them, not that the issues lacked merit, and that the Business and Professions Code provided a supplemental basis for liability. In response to Pacific's allegations that Greenlining's fees were excessive, Greenlining challenged the Commission to order Pacific to disclose the amount it paid to its outside attorneys for this proceeding. Greenlining also contended that it prevailed in the federal court appeal (discussed below), and that the fees for its in-house attorneys are reasonable.

On November 20, 2002, Greenlining supplemented its request with additional information on its hourly rates and on how its federal court work satisfied the standards set out in D.02-06-070 for compensability of work performed in a forum other than the Commission.

On December 20, 2002, Pacific challenged Greenlining's right to compensation for its work in federal court. Pacific argued that Greenlining had failed to demonstrate that it had met the standards established in D.02-06-070. Pacific stated that Greenlining's work in federal court did not have a direct effect on a Commission decision because Greenlining failed to prevail, and its efforts were duplicative of the Commission's.

V. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

Greenlining timely filed its NOI and was found to be eligible for compensation in this proceeding by a ruling dated March 8, 1999, which also found that Greenlining had elected to make its demonstration of significant financial hardship in its compensation request.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part on one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and, if so, the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

Greenlining seeks compensation for its work in this proceeding on issues that can be grouped as (1) issues where the Commission adopted positions advocated by several parties including Greenlining, and (2) issues where the Commission expressly rejected or otherwise declined to adopt the positions advocated by Greenlining. Also, as noted above, Greenlining seeks compensation for its work in federal court litigation that is related to this proceeding.

For the first group, namely, issues where the Commission adopted positions advocated by several parties, Greenlining must show that its

presentation “materially supplement[ed], complement[ed], or contribute[d] to the presentation of another party.” § 1802.5. We have previously determined that an intervenor need not make a unique contribution to meet this standard, but the “customer’s presentation must substantially assist the Commission in making its order or decision.” D.01-11-047, mimeo, at 9.

On the second group of issues, where the Commission did not adopt Greenlining’s position, Greenlining must make a different showing. Under § 1802(h), a party may make a substantial contribution to a decision by presenting evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total. The Commission has construed this statutory provision to authorize an award of compensation even when the position advanced by the intervenor is rejected. For example, in D.89-03-063, we awarded San Luis Obispo Mothers For Peace and Rochelle Becker compensation in the Diablo Canyon rate case because their arguments, while ultimately not adopted by us, forced the utility to thoroughly document the safety issues involved. We said that we may find that an intervenor has made a substantial contribution even in the absence of the adoption of any of the intervenor’s recommendations but only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include (1) an extraordinarily complex proceeding, and (2) a case of unusual importance.

In D.01-11-047 we applied these standards to grant compensation to Aglet Consumers Alliance (Aglet) for work performed on “many decisions at the heart of the current energy crisis.” On two issues where we had not adopted Aglet’s position, Aglet sought compensation but voluntarily reduced its fee request by 50% in recognition of its lack of success on these two issues. We granted Aglet’s

request on those two issues, finding that Aglet's participation had been "useful." In accord with D.01-11-047, we recently granted compensation to the National Council of La Raza (La Raza) for its presentation on broadband issues in R.01-05-046. As with Aglet, we reduced the amount by 50% because we did not adopt La Raza's positions. (See D.03-08-012, at pages 4-6.)

Still other requirements apply to Greenlining's request for compensation for its work in federal court litigation that is related to this proceeding. To receive compensation for this work, Greenlining must show that the work made a substantial contribution to a Commission decision either as part of the judicial review of a Commission's decision, see § 1802(a), or otherwise, see D.02-06-070.

VI. Significant Financial Hardship

In its compensation request, Greenlining made the showing of significant financial hardship as defined by § 1802(g), by demonstrating the economic interests of its individual members would be small compared to the costs of participating in this proceeding. We find that Greenlining has demonstrated significant financial hardship.

Pacific argued that Greenlining could not meet this standard with regard to the McCutchen fees because the firm had agreed to represent Greenlining on a pro bono basis. Were we to adopt Pacific's argument, intervenors who are able to obtain the services of lawyers and experts on a reduced fee, contingent fee (as here), or no fee basis would be hard-pressed to demonstrate significant financial

hardship. We find that Pacific's argument is not supported by the intervenor compensation statute.³

Notably, § 1806 requires that intervenors' costs of representation be compensated on the basis of market rates paid to people with comparable training and experience who offer similar services. This statutory provision should also guide our determination of significant financial hardship. In other words, we must determine whether the intervening "customer" (see § 1802(b)) can afford to pay the reasonable costs of effective representation as those would be calculated under § 1806. Here, Greenlining satisfies this hardship standard. Specifically, we find that, considering the relevant market rates for attorneys and experts as determined by us in various compensation decisions for the timeframe relevant to the work performed in this proceeding, the economic interests of Greenlining's individual members is small compared to the costs of effectively participating in this proceeding.

VI. Greenlining's Claimed Contributions to D.01-09-068

As set out above, the showing required to demonstrate an intervenor's substantial contribution differs according to whether we did or did not adopt the position(s) advocated by the intervenor. Also, special factors apply where, as here, an intervenor seeks compensation for work performed in a forum other than the Commission.

³ Our rejection of Pacific's argument relies on express substantive provisions of the statute, but we note also that Pacific's argument makes no sense as a matter of policy. By adopting the argument, we would communicate to intervenors that, on the one hand, they risk rejection of excessive costs, but on the other hand, they could lose their hardship status if they keep their costs low. This result could only discourage public participation at the Commission, contrary to the intent of the Legislature.

The following discussion separates Greenlining's compensation request into three issue groups corresponding to the three different types of showings appropriate to each group. The first group consists of those issues where the Commission adopted the Greenlining position in whole or in part. In this group, we find that Greenlining advocated the adopted position jointly with other complainants, so the key question for compensation purposes is whether Greenlining's advocacy materially supplemented, complemented, or contributed to the advocacy of the other complainants taking the same position(s). The second group consists of those issues where the Commission did not adopt Greenlining's position; all of those issues were raised by Greenlining alone. Here, the key question for compensation purposes is whether this proceeding presents those features (notably, extraordinary importance and complexity) on which we have relied in awarding compensation even where we have not adopted the intervenor's position. The third group consists entirely of Greenlining's federal court work in relation to D.01-09-058. We judge the compensability of this work under standards set forth in D.02-06-070 and discussed below. .

A. Positions Advocated by Greenlining Jointly with Other Complainants

To obtain compensation where Greenlining joined other parties in persuading the Commission to adopt a position, Greenlining must show that its presentation substantially assisted the Commission in making by materially supplementing or complementing the presentation of another party. To demonstrate its assistance to the Commission, Greenlining points to its role in developing the parties' Joint Stipulation of Undisputed Facts. Greenlining Request at page 5. Greenlining cites to the billing records of its outside counsel ("re: work on statement of undisputed facts") for the proposition that it made a

substantial contribution to the facts relied upon by the Commission. In reviewing the billing records on the pages referenced by Greenlining for work attributed to undisputed facts, about 30 hours⁴ billed on the referenced pages is attributed to such work. Although not specified by Greenlining, we have tabulated these hours and applied our corrected hourly rate for the referenced attorneys to find that Greenlining incurred approximately \$5,090 in costs to prepare the Joint Stipulation of Undisputed Facts. Because the stipulation assisted the Commission, we will allow Greenlining compensation for this work.

Greenlining also takes credit for factual contentions and evidence “developed” on “virtually all issues.” See Greenlining Request at page 6. As an example, Greenlining cites to its cross-examination of a Pacific witness and asserts that the Commission relied on this for the “Marketing Programs and Tactics” section of the decision. We will carefully evaluate this assertion as it underlies Greenlining contention of significant contributions on “virtually all issues.”

The “Marketing Programs and Tactics” section of D.01-09-058 has four subsections: Offer on Every Call, Sequential Offerings, Incentives and Sales Quotas, and Improper Release of Customer Information. In the Offer on Every Call subsection, the decision identifies only UCAN and ORA as challenging Pacific’s practice and cites extensively to UCAN and ORA testimony and exhibits, as well as to ORA cross-examination of a key Pacific witness. On the third and fourth topics – Incentives and Sales Quotas and Improper Release of Customer Information – we did not adopt the complainants’ positions. We note, however, that UCAN’s testimony is again cited extensively, and that neither Greenlining

⁴ When time was billed in aggregate amounts for several tasks, we estimated the duration of time spent on the stipulation in one-hour increments.

nor its exhibits are referenced at any point. Thus, of the four subsections, Greenlining's asserted cross-examination contribution played no role in three of the four.

Turning to the remaining subsection, Sequential Offerings, the major factual premise – that Pacific ordered its service representatives to inform customers of lower-cost options only after the higher-cost options had been rejected⁵ - is attributed to witnesses presented by TIU. These witnesses and the documents they provided are cited extensively. In its request for compensation, Greenlining cites to page 58 of D.01-09-058 as showing that the decision relies on Greenlining's cross-examination of a Pacific witness. Page 58 includes a citation only to Greenlining's testimony, however, we agree that Greenlining's cross-examination was useful on the issue of sequential offerings. Although not cited by Greenlining, the cross-examination is found in transcript pages 517 to 559. Greenlining did provide facts for the record and, through cross-examination, demonstrated the effect on customers.

Specifically, Greenlining's cross-examination developed how the service representatives used the Pacific scripts in implementing the "offer high" tactic. This showing materially complemented TIU's presentation and demonstrated that Pacific was systematically withholding the availability of lower-cost options from customers. We can conclude that this portion of Greenlining's efforts meets the standard for making a substantial contribution, and we will award Greenlining compensation for its work on sequential offerings.

⁵ TIU provided Pacific documentation for the record summarizing this tactic as: "offer high, watch 'em buy, offer low, nowhere to go."

Greenlining's next claimed contribution is that the D.01-09-058 "relies" on Greenlining witnesses in finding that Pacific's marketing of "the Basics," "the Basics Plus Saver Pack," and "the Essentials" was misleading to customers, and that it also relies on Greenlining witnesses Tran and Rodriguez for the proposition that the marketing was even more misleading in Vietnamese and Spanish. The only record evidence explicitly relied in the decision is a UCAN exhibit, see D.01-09-058 at page 41. Greenlining's witnesses are cited solely for the proposition that translations "carried through and in some cases accentuated the erroneous impressions created by the name" of the package, see D.01-09-058 at page 45. Thus, Greenlining provided the Commission the English translations of Pacific's Vietnamese and Spanish marketing materials.

Greenlining's translations assisted the Commission, albeit to a limited degree. Based on the presentation of other parties, the Commission determined that Pacific's marketing of "the Basics" was misleading. Greenlining's translations enabled the Commission to extend this determination to marketing in Vietnamese and Spanish, thus materially supplementing or complementing the presentation of the other parties. We therefore find that Greenlining should be compensated for its work on "the Basics."

Greenlining's next claim of significant contribution concerns the testimony of Pacific witnesses Stoddard and Gilley. Greenlining claims to have "developed their testimony at both deposition and the hearing, providing the basis for many of the Decision's factual findings." Greenlining cites to its attorneys' billings to support this proposition. Greenlining also cites to pages 13 and 51 of the Decision. Page 13 includes a reference to the two Pacific witnesses and the general topics covered by their testimony. Page 51 includes a citation to the Pacific direct testimony and ORA's testimony. The citations to the record on

page 51 are to cross-examination by ORA. In sum, neither pages 13 nor 51 reveal any support for Greenlining's assertion of significant contribution in developing the record with Pacific's witnesses. Consequently, we are unable to conclude that Greenlining has met the statutory standards for compensation for its work on the testimony of Stoddard and Gilley.

Greenlining states that it made a substantial contribution in its briefs by providing legal conclusions adopted by the Commission. Our analysis of Greenlining's contributions already considers, on an issue-by-issue basis, the factual, legal, and policy contentions or recommendations made by Greenlining. To the extent we adopt one of Greenlining's "legal conclusions," we have already recognized that contribution in our discussion of the issues above. Greenlining's award is based on its advocacy and other reasonable costs incurred in presenting a position that we adopted in whole or part. We have already reviewed and accounted for the legal costs associated with those positions.

Greenlining similarly contended that it "carried the laboring oar among the complainants in drafting and responding to pre and post hearing motions." Greenlining Request at page 4. In support for this contention, Greenlining cites to UCAN's statement in its compensation request that it (UCAN) refrained from duplicating other parties' efforts. As with "legal conclusions" discussed above, we consider Greenlining's contributions on issue-by-issue basis. To the extent Greenlining's motion work was part of its presentation on a position we adopted in whole or part, such work has already been included in the award.

In addition to demonstrating substantial contribution to our resolution of issues, an intervenor's compensation request must describe in detail the "services and expenditures" attributable to that contributions, (§ 1804(c)), and must show that the fees and costs for which the intervenor requests compensation

are reasonable. (See § 1802(a).) We found, above, that Greenlining substantially contributed to our resolution of (1) the Sequential Offering issue through Greenlining's cross examination of witnesses, and (2) the misleading marketing issue through Greenlining's English translations of Pacific's Vietnamese and Spanish marketing materials. We have difficulty calculating an award, however, because Greenlining does not adequately document the "services and expenditures" allocable to Sequential Offerings, and because Greenlining's claimed "services and expenditures" allocated to the translations are unreasonable. Accordingly, we have to develop our own allocations for calculating the award, as discussed below.

Specifically, Greenlining does not provide sufficient detail to precisely determine its costs regarding Sequential Offerings. Instead, under the heading "Marketing Programs and Tactics," Greenlining lumps Sequential Offerings together with three other issues on which we have determined Greenlining did not make a substantial contribution. Lacking sufficiently disaggregated cost data to make a precise determination, we will assume that 25% of the costs for which Greenlining seeks compensation under the heading "Marketing Programs and Tactics" are reasonably attributed to Sequential Offerings, and we will calculate the award on that basis.

As to the misleading marketing issue, Greenlining's description of the "services and expenditures" is clear but astonishing. Greenlining usefully provided English translations of marketing materials in Vietnamese and Spanish. For its related "services and expenditures," Greenlining requests about \$227,000, of which only a bit over \$5,000 is attributed to the work of experts on this topic. Lacking a showing that demonstrates the reasonableness of these apparently excessive attorney expenses, we cannot conclude that they are reasonable, and

fully compensable. However, we consider the claimed expenses for experts reasonable, and since we know from experience that a party's attorneys work in tandem with its experts to present the party's position, we will also compensate Greenlining for reasonable attorney fees on this topic. To calculate the latter, we will use a ratio of attorney-to-expert expenses of 13:1.⁶ With the ratio as guide, we award Greenlining \$75,337.50 in compensation for its contribution on the misleading marketing issue. The awarded compensation consists of \$5,381.25 as reasonable expert fees and \$69,956.25 as reasonable attorney fees.

B. Positions Advocated By Greenlining Alone

Greenlining was the only complainant to litigate several issues; however, the Commission did not adopt Greenlining's position on these issues. To show a substantial contribution regarding these issues, Greenlining must show that its presentation was "useful" to the Commission, for example, by enabling the Commission to develop a full record on a very important topic central to the decision (such as the nuclear safety issue in the Diablo Canyon rate case), even though the Commission did not adopt any of Greenlining's specific contentions or recommendations.

In D.01-09-068, the Commission rejected or otherwise declined to adopt Greenlining's position recommendations on the following issues:

1. ACR
2. Marketing Practices Targeting Minorities

⁶ We derive this ratio from an award made to Greenlining in a procedurally similar complaint case, see D.99-04-023, Communications TeleSystems International. The 13:1 ratio of attorney-to-expert expense is approved solely for the purposes of today's decision. We have not attempted a systematic review of awards reflecting a combination of expert and attorney fees, but our experience suggests that a 13:1 ratio is very liberal.

3. Customer Privacy
4. Business and Professions Code

Turning to the specific issues, the Commission rejected Greenlining's contention that the ACR service violated § 2893. This service allows parties to refuse to receive telephone calls from telephones that have the number blocked. Greenlining argued that the service violated § 2893, which prohibits a charge to withhold a number. Citing to a previous decision on ACR, the Commission rejected Greenlining's argument. The record on this matter does not show that Greenlining's attempt to revive this issue was otherwise useful to the Commission or that overall record was enhanced. We, therefore, are unable to find a substantial contribution.

Greenlining also contended that Pacific's marketing program improperly targeted ethnic minorities and recent immigrants. In response, Pacific stated that its marketing study indicated that certain ethnic minorities had greater interest in optional services than others, and Pacific set in place a marketing program that would quickly get sales information to these groups.

The Commission held that the statutory and decisional marketing standards applicable to ethnic minorities are the same as those applicable to all customers. The Commission found no evidence that Pacific had treated any ethnic market segment differently, and denied Greenlining's request. However, we think Greenlining is entitled to compensation for its work on this issue. Although we did not adopt Greenlining's positions, we find that unfair targeting by ethnicity is an issue of grave concern, and Greenlining's efforts were crucial in developing our record on this issue.

In its post-hearing brief, Greenlining contended that Pacific violated the right to privacy created in Article 1, Section 1 of the California Constitution. The

Commission did not address this issue in the decision. The decision does include a section titled “Improper Release of Customer Information” which appears to be a related issue. That section addresses UCAN’s and ORA’s contention that Pacific improperly divulged customer information to its agents and unregulated affiliates in violation of federal statutes, 47 U.S.C. § 222, and P. U. Code § 2891. The Commission found that ORA and UCAN had failed to meet the burden of proof. Greenlining is not identified as participating in the issue, Greenlining presented no related evidence or testimony, and Greenlining did not demonstrate in its request that its presentation on the constitutional issue was helpful. Thus, Greenlining has not shown that it made a useful contribution on this issue.

Greenlining persistently but unsuccessfully advocated that Pacific’s conduct violated various provisions of the Business and Professions Code. The Commission declined to adjudicate the applicability of the Business and Professions Code, finding that it had ample authority under the Public Utilities Code to order all necessary and appropriate remedies. The Commission did not rely on Greenlining’s advocacy regarding the Business and Professions Code for any purpose in the decision. In contrast to the Diablo Canyon rate case, when developing a full record on nuclear safety was vital to the proceeding irrespective of the Commission’s rejection of the intervenor’s specific contentions and recommendations on nuclear safety, our resolution of the issues in this proceeding owed nothing to the Business and Professions Code as a matter of fact, law, or policy. We, therefore, find that Greenlining made no substantial contribution in this regard, and that time spent on this issue does not qualify for compensation under the intervenor compensation statute.

In sum, of the four issues where we did not adopt Greenlining’s position, we find Greenlining made a substantial contribution only with respect to

targeting minorities. However, we are unable to determine precisely the hours properly attributable to any of the four issues where we did not adopt Greenlining's position because Greenlining's compensation request has allocated no time to them. The only exception might be ACR; Greenlining lists one issue as "Caller ID-Anonymous Call Rejection." Since the hours are aggregated, we are unable to determine what share of the total is attributable to each issue. We note as well that Greenlining has intermixed an issue where it and the other complainants were successful (Caller ID) with an issue where it was not (ACR).

Lacking a meaningful time allocation from Greenlining, we will rely on other information in the record to arrive at a reasonable estimate of costs attributable to the targeting minorities issue. Greenlining's expert testimony addressed this issue both directly and indirectly. We have already compensated Greenlining for its experts' time allocated to "the Basics" issue, leaving \$9,000 in expert fees uncompensated. We find that the remaining expert time amount, \$9,000, is a reasonable estimate of Greenlining's time spent on the targeting minorities issue. As with our compensation calculation for "the Basics," we will extrapolate from the expert expense⁷ to estimate the associated legal expenses of \$117,000, with a total of \$126,000 for this issue. Consistent with D.01-11-047 and D.03-08-012, we reduce this by half to arrive at a total award of \$63,000.

Based on our review of the record in this proceeding, we deduce that Greenlining and its outside counsel expended significant efforts on the issues where we did not adopt its position. The request, however, offered no tabulation of these efforts and no analysis of how its presentations on these issues meet our standards for substantial contribution where we did not adopt the claimant's

position. Accordingly, we are unable to consider any award to Greenlining for its efforts on these issues, other than as discussed above. In the future, we encourage Greenlining to more accurately allocate its time among issues, and to specifically demonstrate how any work for which it claims compensation meets our standards for substantial contribution.

C. Federal Court Work

Pacific also opposed Greenlining's request for compensation for work performed in the federal court review of D.01-09-058. Pacific contends that Greenlining did not prevail and its work was duplicative of the Commission's. Greenlining states that it contributed substantially to the defense of the Commission's decision by (1) opposing Pacific's requests for a temporary restraining order and preliminary injunction barring enforcement of the incentive compensation caps, (2) moving to dismiss Pacific's entire case, and (3) moving to dismiss an intervention and motion for summary judgment by another party. Greenlining points out that Pacific's federal suit challenged nearly all of the remedies imposed in the Commission decision, including those retained in the rehearing decision, and that if Pacific had been successful in federal court, the Commission could not have issued the rehearing decision.

In D.02-06-070, we concluded that, under the intervenor compensation statutes, the Commission could compensate an intervenor for work done in a forum other than a Commission proceeding. Here, the facts support our authority to make such an award because Pacific's federal court action sought judicial review of a particular Commission decision, see § 1802(a). However, Greenlining

⁷ Using the 13:1 ratio for legal expense to expert expense from D.99-04-023.

has not acknowledged that its work before the federal court was partially unsuccessful. The federal court issued a temporary restraining order prohibiting the Commission from imposing the incentive compensation cap, despite Greenlining and the Commission's opposition. A review of McCutchen's billings shows that approximately half of its work was directed toward unsuccessfully opposing Pacific's request. As discussed above, our standard for unsuccessful efforts is that the work must be useful to the Commission. A review of the federal court work shows that Greenlining's outside counsel provided experienced and talented assistance. This work was, therefore, useful to the Commission and meets the requirements for compensation. As in D.01-11-047 and D.03-08-012, however, we will reduce it by 50%.

The remaining half of Greenlining's federal court work was directed at upholding the other remedies in the D.01-09-058 and was successful. Greenlining was the only complainant that actively participated in the federal litigation. Thus, we grant in full Greenlining's request for the successful half of the work performed in the federal court.

D. Relationship Between Costs and Benefits

In addition to making a significant contribution to the decision, a party's participation must also be productive in that "the costs of participation should bear a reasonable relationship to the benefits realized." See D.98-04-059. Here, although hard to quantify, we find that the disclosures and service directives to Pacific will substantially benefit Pacific's millions of residential customers. We conclude that the cost of Greenlining's reimbursable work is reasonable compared to the benefits customers obtained from D.01-09-058.

VII. Reasonableness of Requested Compensation**A. Amount Requested**

Greenlining requests total compensation of \$1,154,941.60, comprised of the following:

| | |
|--------------------------------|----------------------|
| Greenlining Experts | \$ 24,165.00 |
| Greenlining In-house Attorneys | \$ 189,269.50 |
| Greenlining Expenses | <u>\$ 100.31</u> |
| TOTAL | \$ 213,534.81 |

| | |
|----------------------------------|---------------------------|
| Outside Counsel – McCutchen Firm | |
| 1998 | \$ 375,518.75 |
| 1999 | \$ 176,848.50 |
| 2000 | \$ 203,772.50 |
| 2001 | \$ 30,507.59 ⁸ |
| 2001 (Federal Case) | \$ 95,348.00 |
| Miscellaneous Expenses | \$ 59,411.47 |
| TOTAL | \$ 941,406.81 |
| TOTAL GREENLINING REQUEST | \$1,154,941.60 |

B. Allowed Compensation

As discussed above, certain portions of Greenlining's time will be included for compensation. Several of Greenlining's requested hourly rates (including its own and McCutchen's hours) require modification to make them consistent with our precedent. The requested and corrected rates for each attorney and expert for each year are compiled in Attachment A, along with the rationale supporting each correction.

Total Compensation Request at Corrected Hourly Rates

McCutchen

| | |
|----------------|---------------------|
| 1998 | \$ 309,952.50 |
| 1999 | 143,497.50 |
| 2000 | 166,109.00 |
| 2001 | 23,943.50 |
| <u>Federal</u> | <u>69,954.50</u> |
| TOTAL | \$713,457.00 |

⁸ Adjusted to remove \$7,488.41 for 50% decrease for time spent on travel or the compensation request.

Greenlining

| | |
|--------------------|----------------------------|
| 1998 | 73,521.50 |
| 1999 | 54,429.25 |
| 2000 | 47,513.25 |
| 2001 | 4,860.00 |
| Experts | <u>14,043.75</u> |
| TOTAL | \$194,367.75 |
| Grand Total | <u>\$907,824.75</u> |

As set out above, we have allowed Greenlining compensation for 25% of the time it billed to Marketing Programs. In its compensation request, however, Greenlining did not show a breakdown of the hours for each attorney by issue; consequently, we cannot modify the total billing for each issue to reflect the hourly rates we have adopted in the tables in Attachment A. To simplify, we will derive an hourly rate correction factor using the corrected total hourly compensation divided by the requested total hourly compensation:

$$\text{Hourly Rate Correction Factor} = \frac{907,824.75}{1,095,429.90} = .83$$

The resulting total for Marketing Programs and Tactics:

$$\$400,001 \text{ (requested amount)} \times .83 \text{ (correction factor)} \times .25 = \$83,000.21$$

Our calculations for the other issues for which we grant compensation are set out below:

Joint Stipulation of Undisputed Facts \$ 5,090.00

Basics \$5,381.25 (expert expense) + (13 x \$5,381.25) = \$ 75,337.50

Targeting Minorities

$$\$9,000 \text{ (expert expense)} + (13 \times \$9,000) = \$126,000.00 \times .5 = \$63,000$$

Federal Work

Issues where Court adopted Greenlining position

\$69,954.50 (total amount) x .5 = \$ 34,977.25

Issues where Court did not adopt Greenlining Position

\$34,977.25 (half of total) x .5 (50% reduction) = \$17,488.62

SUMMARY

| | |
|--|---------------------|
| <u>Joint Stipulation of Undisputed Facts</u> | \$5,090.00 |
| <u>Marketing Programs and Tactics</u> | \$83,000.21 |
| <u>Basics</u> | \$75,337.50 |
| <u>Targeting Minorities</u> | \$ 63,000.00 |
| <u>Federal Work</u> | <u>\$52,465.87</u> |
| TOTAL | \$278,893.38 |

Total compensation for attorneys' and experts' fees is \$278,893.38. As modified above, the rates are reasonable and will be approved.

C. Other Costs

Greenlining requested \$59,411.47 for other McCutchen costs (e.g. express mailing, postage, photocopying, binding, computerized research, telephone, fax), and Greenlining requested \$100.31 for its own costs for court reporting and postage. We will accept these as reasonable costs and will allow Greenlining \$59,511.78 for other expenses.

VIII. Award

We award Greenlining:

| | |
|------------------------------|----------------------|
| Attorneys' and Experts' Fees | \$ 278,893.38 |
| Other Costs | <u>\$ 59,511.78</u> |
| TOTAL | \$ 338,405.16 |

Pacific is responsible for payment of this award.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after Greenlining filed their compensation request and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put Greenlining on notice that the Commission staff may audit Greenlining's records related to this award. Thus, Greenlining must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Greenlining's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

IX. Comments on Draft Decision

The draft decision of the in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure

X. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Greenlining submitted a request for compensation for its contribution to D. 01-09-058.
2. Pacific opposed Greenlining's request.
3. Greenlining made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.
4. Greenlining timely filed its NOI.

5. Greenlining's work on the Joint Stipulation of Undisputed Facts assisted the Commission.

6. Greenlining's showing on sequential offerings materially supplemented or complemented TIU's showing.

7. Greenlining's evidence on "the Basics" enabled the Commission to extend its finding that Pacific's marketing materials in English were misleading to the Vietnamese and Spanish versions of those materials.

8. Greenlining's references did not support its contention that it developed the testimony of Pacific witnesses Stoddard and Gilley.

9. Greenlining did not show that its legal argument, remedies, or responses to pre and post hearing motions materially supplemented or complemented the presentation of another party.

10. Twenty-five percent of the total expense Greenlining has allocated to Marketing Programs and Tactics is a reasonable estimate of the expense for the sequential offerings issue.

11. Greenlining attributed legal expenses of \$227,000 to its presentation on "the Basics." This amount is excessive and unreasonable.

12. Expert expenses of \$5,381.25 for Greenlining's presentation on "the Basics" are reasonable.

13. Using a ratio of legal expense to expert expense of 13:1, which is the ratio of those expenses in a prior award of compensation to Greenlining in a procedurally similar case, is a reasonable means to derive an estimate of legal expense. This ratio results in an award of \$75,337.50 for Greenlining's presentation on this issue.

14. Unfair targeting of minorities is an issue of grave concern, and Greenlining's efforts were crucial to developing the record on this issue.

15. Greenlining did not show that its presentation on privacy issues and the Business and Professions Code contributed to the Commission's decision.

16. Greenlining's expert time allocated to issues other than "the Basics" (\$9,000) is a reasonable estimate of Greenlining's expert time devoted to the targeting minorities issue. A reasonable estimate of legal expense for the targeting minorities issues can be calculated from the expert expense using the 13:1 ratio previously described.

17. About half of Greenlining's federal court work was successful, and should be compensated in full. The work represented by the remaining half was unsuccessful but was useful to the Commission's efforts; it should be compensated but reduced by 50%.

18. Greenlining's estimate of other expenses is reasonable.

19. The cost of Greenlining's reimbursable work is reasonable compared to the benefits customers received from D.01-09-058.

20. As modified herein and listed in Attachment A, Greenlining's attorneys' and experts' rates are no greater than the market rates for individuals with comparable training and experience.

21. Attachment B to the Opinion summarizes today's award.

Conclusions of Law

1. To the extent set out above, Greenlining has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. Greenlining has shown that it meets our standards for intervenor compensation for the following issues and expense amounts:

| | |
|--|--------------|
| <u>Joint Stipulation of Undisputed Facts</u> | \$ 5,090.00 |
| <u>Marketing Programs and Tactics</u> | \$ 83,000.21 |
| <u>Basics</u> | \$ 75,337.50 |
| <u>Targeting Minorities</u> | \$ 63,000.00 |

| | |
|---------------------|---------------------|
| <u>Federal Work</u> | <u>\$ 52,465.87</u> |
| TOTAL | \$278,893.78 |

3. Greenlining has shown that \$59,511.78 is a reasonable amount for other expenses.

4. Greenlining should be awarded \$338,405.16 for its contribution to D.01-09-058.

5. This order should be effective today so that Greenlining may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Greenlining Institute and the Latino Issues Forum (Greenlining) is awarded \$338,405.16 for its contribution to Decision (D.) 01-09-058.

2. Pacific Bell Telephone Company (Pacific) shall pay the total of \$338,405.16 to Greenlining as set out above within 30 days of the effective date of this order. Pacific shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning 75 days after April 12, 2002, and continuing until full payment is made.

3. Pacific's motion to file the Greenlining-McCutchen engagement letter under seal is granted. Such letter shall remain under seal for a period of two years from the date of this ruling. During that period, the foregoing documents or portions of documents shall not be made accessible or be disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If Pacific believes that further

protection of this information is needed after two years, it may file a motion stating the justification for further withholding the material from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

4. These proceedings are closed.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment A

Page 1

In D.02-06-070, we adopted 2000 and 2001 hourly rates for outside counsel for TURN (Pollack and Shargal) who had comparable experience to Acker, Agarwal, Hixson, and Kennedy, Pierson, Sen, and Wauk; we will adopt the same rates here, and extrapolate back for the years 1998 and 1999. The proposed rate for attorney Atkisson is adjusted to correspond to the rate adopted for another first year attorney, Janette Schue, in D.02-05-005. Summer associates Goodson and Kurtin are assigned our previously approved rate for law clerks. The requested hourly rate for attorney Bowling is adjusted to the hourly rate for Greenlining attorney Brown, who has comparable experience, and whose hourly rate we set in D. 02-09-020 at \$275 for the year 2000. We find that McCutchen attorney Houlihan has similar experience, education, and skill to Greenlining attorney Gnaizda, and we adopt for Houlihan the rates previously set for Gnaizda, \$315 for 2000 and \$350 for 2001.

Attorney Reese's resume lists impressive credentials as an expert in federal appellate matters. Reese's experience is comparable to attorneys Strumwauser and Woocher, for which we set an hourly rate for 2001 of \$350 in D.02-06-070. Attorney Hegarty is a 2001 law school graduate, for which a billing rate of \$150 is reasonable. Because all of Hegarty's time was spent on the intervenor compensation request, it is reduced by 50%.

Attachment A

Page 2

McCutchen Billings for 1998

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|--------------|--------------|----------------------------|--------------------------|------------------------|
| R. Acker | 131.3 | \$175 | \$160 | \$ 21,008 |
| M. Agarwal | 200.5 | \$175 | \$160 | \$ 32,080 |
| G. Bowling | 36.5 | \$265 | \$260 | \$ 9,490 |
| T. Houlihan | 148.2 | \$360 | \$290 | \$ 42,978 |
| E.Pierson | 39.5 | \$155 | \$160 | \$ 6,320 |
| E.Pierson | 102.4 | \$175 | \$160 | \$ 16,384 |
| M.Robbins | 5.2 | \$235 | \$170 | \$ 884 |
| M.Robbins | 114.75 | \$245 | \$170 | \$ 19,507.50 |
| K.Robinson | 60.3 | \$175 | \$160 | \$ 9,648 |
| K.Robinson | 746.1 | \$190 | \$160 | \$119,376 |
| N.Sen | 159.1 | \$175 | \$160 | \$ 25,456 |
| A.Wauk | 7.1 | \$175 | \$160 | \$ 1,136 |
| R.Goodson | 62.4 | \$135 | \$75 | \$ 4,680 |
| S. Kurtin | 13.4 | \$135 | \$75 | \$ 1,005 |
| N.Lane | 58 | \$75 | 0 ¹ | 0 |
| B.Murray | 48.3 | \$105 | 0 | 0 |
| TOTAL | | | | \$309,952.50 |

¹ Greenlining describes Murray and Lane as “legal assistants” which we infer to be administrative staff. The costs of such services are included in the hourly rates for attorneys as we determined in D.98-11-049.

Attachment A

Page 3

McCutchen Billings for 1999

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|--------------|--------------|----------------------------|--------------------------|------------------------|
| R. Acker | 64.5 | \$180 | \$170 | \$ 10,965 |
| R.Acker | .8 | \$200 | \$170 | \$ 136 |
| M. Agarwal | 23.4 | \$180 | \$170 | \$ 3,978 |
| M.Agarwal | 1.8 | \$200 | \$170 | \$ 306 |
| G. Bowling | 24.9 | \$275 | \$275 | \$ 6,847.50 |
| T. Houlihan | 181.5 | \$380 | \$300 | \$ 54,450 |
| M.Robbins | 8.1 | \$260 | \$200 | \$ 1,620 |
| K.Robinson | 296.4 | \$200 | \$170 | \$ 50,388 |
| K.Robinson | 9 | \$215 | \$170 | \$ 1,530 |
| N.Sen | 70.6 | \$180 | \$170 | \$ 12,002 |
| A.Wauk | 7.5 | \$180 | \$170 | \$ 1,275 |
| N.Lane | 85.2 | \$75 | 0 | 0 |
| B.Murray | 8 | \$115 | 0 | 0 |
| TOTAL | | | | \$143,497.50 |

Attachment A

Page 4

McCutchen Billings for 2000

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|---------------------------|--------------|-------------------------------|-----------------------------|---------------------------|
| R. Acker | 4.5 | \$215 | \$180 | \$ 810 |
| M. Agarwal | 53.8 | \$215 | \$80 | \$ 9,684 |
| E. Atkisson | 159.2 | \$175 | \$165 | \$ 26,268 |
| G. Bowling | 11.5 | \$295 | \$275 | \$ 3,162.5 |
| T. Hixson | 110.1 | \$215 | \$180 | \$ 19,818 |
| T. Hixson | 38.3 | \$230 | \$180 | \$ 6,894 |
| T. Houlihan | 192.5 | \$420 | \$315 | \$ 60,637.50 |
| T. Kennedy | 214.5 | \$215 | \$180 | \$ 38,610 |
| T. Kennedy (Comp Req.) | 2.5 | \$107.5 | \$90 | \$ 225 |
| TOTAL | | | | \$166,109 |

Attachment A

Page 5

McCutchen Billings for 2001

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|---------------------------|--------------|----------------------------|--------------------------|------------------------|
| G. Bowling | 6 | \$320 | \$285 | \$ 1,710 |
| R. Hegarty Comp. Req. | 13.2 | \$97.5 | \$75 | \$ 990 |
| T. Hixson | 62.2 | \$270 | \$190 | \$ 11,818 |
| T. Hixson Comp. Req. | .7 | \$135 | \$95 | \$ 66.5 |
| T. Houlihan | 9.6 | \$475 | \$350 | \$ 3,360 |
| T. Houlihan Comp. Req. | .3 | \$237.5 | \$175 | \$ 52.5 |
| T. Kennedy | 9.4 | \$255 | \$190 | \$ 1,786 |
| T. Kennedy Comp. Req. | 30.9 | \$127.5 | \$95 | \$ 2,935.5 |
| J. Reese | 3.5 | \$440 | \$350 | \$ 1,225 |
| TOTAL | | | | \$ 23,943.50 |

Attachment A

Page 6

McCutchen Billings for 2001 (Federal Case)

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|-----------------|---------------------|-----------------------------------|---------------------------------|-------------------------------|
| G. Bowling | 47.7 | \$320 | \$285 | \$13,594.50 |
| T. Hixson | 129 | \$270 | \$190 | \$24,510 |
| T. Hixson | 41.1 | \$295 | \$190 | \$ 7,809 |
| T. Houlihan | 16.1 | \$475 | \$350 | \$ 5,635 |
| T. Houlihan | 14.1 | \$525 | \$350 | \$ 4,535 |
| T. Kennedy | 70.9 | \$255 | \$190 | \$13,471 |
| TOTAL | | | | \$69,954.50 |

Greenlining Attorney Billings for 1998

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|-----------------|---------------------|-----------------------------------|---------------------------------|-------------------------------|
| R.Gnaizda | 97 | \$290 | \$290 | \$28,130 |
| S.Brown | 138 | \$260 | \$260 | \$35,880 |
| C.Witteman | 55.95 | \$250 | \$170 | \$ 9,511.50 |
| TOTAL | | | | \$73,521.50 |

Attachment A

Page 7

Greenlining Attorney Billings for 1999

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|-----------------|---------------------|-----------------------------------|---------------------------------|-------------------------------|
| R.Gnaizda | 21.6 | \$300 | \$300 | \$ 6,480 |
| S.Brown | 105.25 | \$275 | \$275 | \$ 28,943.75 |
| C.Witteman | 93.9 | \$250 | \$245 | \$ 23,005.50 |
| TOTAL | | | | \$58, 429.25 |

Greenlining Attorney Billings for 2000

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|-----------------|---------------------|-----------------------------------|---------------------------------|-------------------------------|
| R.Gnaizda | 49.2 | \$310 | \$310 | \$15,252 |
| S.Brown | 35.25 | \$275 | \$275 | \$ 9,693.75 |
| C.Witteman | 88.5 | \$255 | \$255 | \$22,567.50 |
| TOTAL | | | | \$47,513.25 |

Greenlining Attorney Billings for 2001

| Attorney | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|-----------------|---------------------|-----------------------------------|---------------------------------|-------------------------------|
| R.Gnaizda | 9 | \$350 | \$350 | \$3,150 |
| S.Brown | 6 | \$285 | \$285 | \$1,710 |
| TOTAL | | | | \$4,860 |

Attachment A

Page 8

Greenlining Expert Billings for 1998

| Expert | Hours Billed | Requested Hourly Rate (\$) | Allowed Hourly Rate (\$) | Corrected Request (\$) |
|-----------------|---------------------|-----------------------------------|---------------------------------|-------------------------------|
| J.Gamboa | 31.5 | \$135 | \$135 | \$ 4,252.50 |
| B.Hing | 13.25 | \$300 | \$150 | \$ 1,987.50 |
| B.Hing -travel | 4 | \$150 | \$75 | \$ 300 |
| N.Tran | 13.6 | \$250 | \$150 | \$ 2,040 |
| H.Der | 9.75 | \$250 | \$150 | \$ 1,462.50 |
| H. Der – travel | .5 | \$125 | \$75 | \$ 37.50 |
| G.Rodriguez | 37.75 | \$250 | \$105 | \$ 3,963.75 |
| TOTAL | | | | \$14,043.75 |

We modified the hourly rate for witness Hing, Tran, and Der to correlate with the allowed rate for witness Givens set in D.02-03-038 due to similar qualifications in the same proceeding. Witness Rodriguez's 1998 hourly rate was set in D.00-04-003. Attorney Witteman's rates have been adjusted to previously set rates.

Attachment A

Page 9

(END OF ATTACHMENT A)

Attachment B
Page 1

| | |
|----------------------------------|------------|
| Compensation Decision(s): | |
| Contribution Decision(s): | D0109058 |
| Proceeding(s): | C9804004 |
| Author: | ALJ Bushey |
| Payer(s): | Pacific |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Reason Change/Disallowance |
|---|-------------------|-------------------------|-----------------------|---|
| Greenlining Institute/Latino Issues Forum | 4/12/02 | \$1,154,941.60 | \$178,687.17 | Failure to prevail/make substantial contribution; unproductive effort/excessive hours |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|-------------|---|-----------------------------|----------------------------------|---------------------------|
| Gregory | Bowling | Attorney | Greenlining Institute / Latino Issues Forum | \$320 | 2001 | \$285 |
| Randall | Hegarty | Attorney | Greenlining Institute / Latino Issues Forum | \$185 | 2001 | \$150 |
| Thomas | Hixson | Attorney | Greenlining Institute / Latino Issues Forum | \$270 | 2001 | \$190 |
| Terry | Houlihan | Attorney | Greenlining Institute / Latino Issues Forum | \$475 | 2001 | \$350 |
| Thomas | Kennedy | Attorney | Greenlining Institute / Latino Issues Forum | \$255 | 2001 | \$190 |
| John | Reese | Attorney | Greenlining Institute / Latino Issues Forum | \$440 | 2001 | \$350 |
| Richard | Acker | Attorney | Greenlining Institute / Latino Issues Forum | \$215 | 2000 | \$180 |
| Monty | Agarwal | Attorney | Greenlining Institute / Latino Issues Forum | \$215 | 2000 | \$180 |
| Gregory | Bowling | Attorney | Greenlining Institute / Latino Issues Forum | \$295 | 2000 | \$275 |
| Erik | Atkisson | Attorney | Greenlining Institute / Latino Issues Forum | \$175 | 2000 | \$165 |
| Thomas | Hixson | Attorney | Greenlining Institute / | \$215 | 2000 | \$180 |

Attachment B

Page 2

| | | | | | | |
|--------|-----------|-----------|---|-------------|------|-------|
| | | | Latino Issues Forum | | | |
| Terry | Houlihan | Attorney | Greenlining Institute / Latino Issues Forum | \$420 | 2000 | \$315 |
| Thomas | Kennedy | Attorney | Greenlining Institute / Latino Issues Forum | \$215 | 2000 | \$180 |
| R. | Acker | Attorney | Greenlining Institute / Latino Issues Forum | \$180/\$200 | 1999 | \$170 |
| M. | Agrawal | Attorney | Greenlining Institute / Latino Issues Forum | \$180/\$200 | 1999 | \$170 |
| G. | Bowling | Attorney | Greenlining Institute / Latino Issues Forum | \$275 | 1999 | \$275 |
| T. | Houlihan | Attorney | Greenlining Institute / Latino Issues Forum | \$380 | 1999 | \$300 |
| M. | Robbins | Attorney | Greenlining Institute / Latino Issues Forum | \$260 | 1999 | \$200 |
| K. | Robinson | Attorney | Greenlining Institute / Latino Issues Forum | \$200/\$215 | 1999 | \$170 |
| N. | Sen | Attorney | Greenlining Institute / Latino Issues Forum | \$180 | 1999 | \$170 |
| A. | Wauk | Attorney | Greenlining Institute / Latino Issues Forum | \$180 | 1999 | \$170 |
| A. | Acker | Attorney | Greenlining Institute / Latino Issues Forum | \$175 | 1998 | \$160 |
| M. | Agarwal | Attorney | Greenlining Institute / Latino Issues Forum | \$175 | 1998 | \$160 |
| G. | Bowling | Attorney | Greenlining Institute / Latino Issues Forum | \$265 | 1998 | \$260 |
| T. | Houlinhan | Attorney | Greenlining Institute / Latino Issues Forum | \$360 | 1998 | \$290 |
| E. | Pierson | Attorney | Greenlining Institute / Latino Issues Forum | \$155/\$175 | 1998 | \$160 |
| M. | Robbins | Attorney | Greenlining Institute / Latino Issues Forum | \$235/\$245 | 1998 | \$170 |
| K. | Robinson | Attorney | Greenlining Institute / Latino Issues Forum | \$175/\$190 | 1998 | \$160 |
| N. | Sen | Attorney | Greenlining Institute / Latino Issues Forum | \$175 | 1998 | \$160 |
| A. | Wauk | Attorney | Greenlining Institute / Latino Issues Forum | \$175 | 1998 | \$160 |
| R. | Goodson | Law Clerk | Greenlining Institute / Latino Issues Forum | \$135 | 1998 | \$75 |

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|----|--------|-----------|---|-------|------|------|
| S. | Kurtin | Law Clerk | Greenlining Institute / Latino Issues Forum | \$135 | 1998 | \$75 |
|----|--------|-----------|---|-------|------|------|

Greenlining

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|----|-----------|----------|---|-------|------|-------|
| R. | Gnaizda | Attorney | Greenlining Institute / Latino Issues Forum | \$290 | 1998 | \$290 |
| S. | Brown | Attorney | Greenlining Institute / Latino Issues Forum | \$260 | 1998 | \$260 |
| C. | Witteman | Attorney | Greenlining Institute / Latino Issues Forum | \$250 | 1998 | \$170 |
| R. | Gnaizda | Attorney | Greenlining Institute / Latino Issues Forum | \$300 | 1999 | \$300 |
| S. | Brown | Attorney | Greenlining Institute / Latino Issues Forum | \$275 | 1999 | \$275 |
| C. | Witteman | Attorney | Greenlining Institute / Latino Issues Forum | \$250 | 1999 | \$245 |
| R. | Gnaizda | Attorney | Greenlining Institute / Latino Issues Forum | \$310 | 2000 | \$310 |
| S. | Brown | Attorney | Greenlining Institute / Latino Issues Forum | \$275 | 2000 | \$275 |
| C. | Witteman | Attorney | Greenlining Institute / Latino Issues Forum | \$255 | 2000 | \$255 |
| R. | Gnaizda | Attorney | Greenlining Institute / Latino Issues Forum | \$350 | 2001 | \$351 |
| S. | Brown | Attorney | Greenlining Institute / Latino Issues Forum | \$285 | 2001 | \$285 |
| J. | Gamboa | Expert | Greenlining Institute / Latino Issues Forum | \$135 | 1998 | \$135 |
| B. | Hing | Expert | Greenlining Institute / Latino Issues Forum | \$300 | 1998 | \$150 |
| N. | Tran | Expert | Greenlining Institute / Latino Issues Forum | \$250 | 1998 | \$150 |
| H. | Der | Expert | Greenlining Institute / Latino Issues Forum | \$250 | 1998 | \$150 |
| G. | Rodriguez | Expert | Greenlining Institute / Latino Issues Forum | \$250 | 1998 | \$105 |

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(END OF ATTACHMENT B)